



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 11, 1997

Mr. Kevin D. Pagan
Assistant City Attorney
City of McAllen
P.O. Box 220
McAllen, Texas 78505-0220

OR97-2716

Dear Mr. Pagan:

You ask this office to reconsider our ruling in Open Records Letter No. 97-2195 (1997). Your request for reconsideration was assigned ID# 111328.

The City of McAllen (the "city") received a request for "birth and death records for these families: DeKock, Bannworth and Levermann's." In Open Records Letter No. 97-2195 (1997), this office concluded that the city could not withhold the requested records under section 552.115 of the Government Code.

You request reconsideration on behalf of the Texas Department of Health (the "department"). The department contends that section 552.115 excepts from disclosure a birth or death record maintained by the Bureau of Vital Statistics of the Texas Department of Health or by a local registration official. We have reviewed the department's arguments and agree with its interpretation of section 552.115 of the Government Code.

Two different bills, S.B. 973 and H.B. 1285, dealing with section 3(a) (15), the predecessor to section 552.115, were enacted by the 71st Legislature. Senate Bill 973 amended the act to provide as follows:

(15) A birth or death record maintained by the bureau of vital statistics of the Texas Department of Health or by a local registration official, [is excepted from the requirements of Section 552.021] except that:

(A) a birth record is public information and available to the public on and after the 50th anniversary of the date on which the record is filed with the bureau of vital statistics or local registration official; and,

(B) a death record is public information and available to the public on and after the 25th anniversary of the date on which the record is filed with the bureau of vital statistics or local registration official.

Acts 1989, 71st Leg., ch. 920, at 3951. Another bill, House Bill 1285, returned section 3(a)(15) to its pre-1987 status by eliminating the words "or by a local registration official." Acts 1989, 71st Leg., ch. 1248, § 9, at 4996. The publisher of Vernon's annotated statutes printed a version of section 3(a)(15) that combines the two bills. *See* Open Records Decision No. 596 (1991) at 5, n.6. Thus, it contains no reference to local registration officials.

We believe that SB 973 and HB 1285 are irreconcilable with respect to birth and death records held by local registration officials. Thus, we must apply the rule of statutory construction that the statute latest in date of enactment prevails. *See* Gov't Code § 311.025. The legislature passed both bills on May 29, 1989. The department has informed this office that a review of the legislative history indicates that SB 973 was finally passed at some time between 7:40 p.m. and 8:28 p.m. on that date. On the other hand, the HB 1285 was finally passed at 12:38 p.m. Thus, Senate Bill 973, which includes in the exception birth and death records held by local registration officials, was the latest in time of enactment. Therefore, birth or death records held by local registration officials are excepted from required public disclosure under section 552.115 of the Government Code.

Open Records Letter No. 97-2195 (1997) is overruled to the extent it conflicts with this conclusion. We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/rho

Ref.: ID# 111328

Enclosures: Submitted documents

cc: Ms. Jo Ann Levermann Searson
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(w/o enclosures)